A.F.R.

(56)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 4161 OF 1999

PETITIONER Itwari Ram, aged about 53 years, son of Butu Teli, resident of village Nawagaon, Post Dhoura Bhata, Tahsil Dhamtari, District Raipur (Now District Dhamtari), M.P.

Vs.

RESPONDENTS

1. State of M.P., through, Secretary, Revenue Department, Vallabh Bhawan, Bhopal.
2. Commissioner, Raipur Division, Raipur, M.P.
3. Collector, Raipur, District Raipur, M.P.
4. Sub-Divisional Officer, Dhamtari, District Raipur (Now District Dhamtari), M.P.
5. Kamta, son of Hagaru Gond, resident of Dhoti Dih, Patwari Circle No.79, Tahsil Dhamtari, District Raipur, (Now District Dhamtari), M.P.

Present : Smt. Renu Kochar, learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy. G.A. for the State/respondents 1 to 4.

ORAL ORDER

(Passed on 20th July, 2006)

In this writ petition, the validity of the order dated 09.08.1999 of the Additional Commissioner, Raipur, the 2nd respondent herein, in Revision No.127-A-23 of 1998-99 affirming the order passed by the Collector, Raipur, the 3rd respondent herein, dated 22.07.1996 in Appeal No.76/A/23 year 1994-95 and the order dated 30.09.1993 passed by the Sub Divisional Officer, Dhamtari, the 4th respondent herein, is assailed.

(2) The facts of the case, in brief, are as follows:

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According to the petitioner, his father, Butu Teli, by name, under a registered Sale Deed dated 06.08.1963 marked as Annexure-P/4 purchased agricultural land comprised in Khasra No.397, *ad* measuring 1.21 acres situated in Dhoti Dih, P.C.No.79, Tahsil Dhamtari, Raipur District from one Kamta, son of Hagaru Gond, the 5th respondent herein, after obtaining permission from the 3rd respondent under Section 165 (6) of M.P. (C.G.) Land Revenue Code, 1959 (for short 'the Code'), vide order dated 16.07.1963, in Revenue Case No.584/A-21/1962-63. When the matter stood thus, the 4th respondent initiated proceedings under Section 170-B of the Code against the father of the petitioner in R.C. No.315/-A-23/88-89 on the basis of a report submitted by Halka Patwari. The 4th respondent despite being informed by the Halka Patwari that Butu Teli had died, without impleading the petitioner as his legal representative, passed order on 30.09.1993 directing restoration of the land to the 5th respondent on the ground that the petitioner did not notify to the 4th respondent the information as to how he came in possession of the subject land. The petitioner feeling aggrieved by the above order of the 4th respondent preferred an appeal to the 3rd respondent. The 3rd respondent too accepting the reason assigned by the 4th respondent as valid to restore the subject land in favour of the 5th respondent dismissed the appeal by his order dated 22.07.1996. Even the Revision preferred by the petitioner to the 2nd respondent met with the same fate. The 2nd respondent dismissed the Revision by his order dated 09.08.1999. Hence, this writ petition by the aggrieved petitioner.

(3) It is quite clear from the materials placed before the Court that the 4th respondent before passing the impugned order dated 30.09.1993 conducted an enquiry as envisaged under sub-Section (3) of

Section 170-B of the Code. In response to the notice issued by the 4th respondent, the petitioner appeared before him and submitted that he in fact had sent the information required under sub-Section (1) of Section 170-B of the Code under a Certificate of Posting. However, the 4th respondent did not believe the version of the petitioner on the ground that such information was not received by his office. In the premise, the 4th respondent taking advantages of the presumption enacted in sub-Section (2) of Section 170-B of the Code opined that the petitioner has been in possession of the subject land without any lawful authority and so opining directed restoration of the subject land to the 5th respondent who belongs to an aboriginal tribe. Respondent No.3 as well as respondent No. 2 have also opined similarly while confirming the order of the 4th respondent dated 30.09.1993.

(4) Therefore, the question for consideration is whether the opinion of the statutory authorities-respondents 2 to 4 is valid and whether they were justified in directing restoration of the subject land to the 5th respondent by invoking the fiction enacted under sub-Section (2) of Section 170-B of the Code. Sub-Sections (1), (2) and (3) of Section 170-B read as follows:

> **"170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.-** (1) Every person who on the date of commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as

may be prescribed, all the information as to how he has come in possession of such land.

(2) If any person fails to notify the information as required by sub-section(1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferer and, if he is dead, in his legal heirs."

No doubt, under sub-Section (1) a person who is in possession of agricultural land belonging to an aboriginal tribe under sub-Section (6) of Section 165 of the Code between 2nd October 1959 and 24th October 1980 is required to notify the jurisdictional Sub-Divisional Officer all the information as to how he came in possession of such land. In the instant case, there is controversy between the parties with regard to the sending and receiving information envisaged under sub-Section(1) of Section 170-B of the Code. Whereas it is the case of the petitioner that such information was sent to the 4th respondent, the 4th respondent claims that he did not receive such information from the petitioner. But, the fact remains that in the course of the enquiry conducted by the 4th respondent under sub-Section (3), the petitioner produced the Certificate of Posting in support of his case that information was sent to the 4th respondent. There is presumption that can be drawn in favour of the petitioner for having sent the information to the 4th respondent in terms of Section 114 of Indian Evidence Act. Be that as it may, assuming that the 4th respondent in fact did not receive the communication sent up by the petitioner under sub-

Section (1), even then, the 4th respondent ought not to have straightaway invoked the deeming clause enacted in sub-Section (2) of Section 170-B of the Code and directed restoration of the subject land to the 5th respondent. No doubt, failure to notify the information under sub-Section (1) leads to a presumption that the person has been in possession without lawful authority. The consequence of the presumption being drawn is that the land shall, on the expiry of the period of two years, referred to in sub-Section (1), revert to the aboriginal tribal vendor to whom it originally belonged and if he is dead, to his legal heirs.

(5) Though sub-Section (3) commences with the words " on receipt of the information under sub-Section (1)", it cannot be that no show-cause notice and no enquiry are necessary in matters covered by sub-Section (2). In **Atmaram & Others Vs. State of M.P. & Others**[1] U.L. Bhat, C.J. speaking for the Division Bench of the Madhya Pradesh High Court has opined that the enquiry envisaged under sub-Section (3) of Section 170-B of the Code equally applies to matters covered by sub-Section (2). In other words, issuance of show-cause notice and conduct of enquiry envisaged under sub-Section (3) of Section 170-B of the Code are equally insisted and applicable when the matter is covered by sub-Section (2), that is to say that even in a case where the person who has come into possession of the land between 2nd October 1959 and 24th October 1980 did not notify the information to the jurisdictional Sub-Divisional Officer. The Division Bench of Madhya Pradesh High Court in the above judgment while opining so has placed reliance on its earlier judgment in the case of **Dhirendra Nath Sharma Vs. State of M.P and another**[2]. I am in respectful agreement with the above view of the

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1. 1995 RN 124 2. 1986 RN 106 = 1985 MPLJ 786

Madhya Pradesh High Court. Simply because, sub-Section (2) has enacted a presumption, it would be totally unfair for a jurisdictional Sub-Divisional Officer to straightaway evict or take over the land and restore the same to the aboriginal tribal vendor without issuing notice and conducting enquiry envisaged under sub-Section (3) of Section170-B of the Code. Of course, the provisions of sub-Section (3) of Section 170- B are not drafted happily so as to cover a matter falling under sub-Section (2) also. Conducting enquiry and giving fair opportunity to the person like the petitioner before passing an adverse order is absolutely necessary, particularly, in the premise of the definite case of the petitioner that his father purchased the land after obtaining permission from the jurisdictional Collector as required under sub-Section (6) of Section 165 of the Code. In that view of the matter, I think that it is a fit case to be remanded to the 4th respondent to conduct an enquiry *de novo* and pass appropriate order on merit.

(6) In the result and for the foregoing reasons, the writ petition is allowed and impugned orders passed by the 2nd, 3rd and 4th respondents are set aside and the proceedings are remanded to the 4th respondent with a direction to conduct an enquiry as envisaged under sub-Section (3) of Section 170-B of the Code and pass appropriate order after issuing notice to the petitioner and after giving a fair opportunity to the petitioner to represent his case. I also permit the petitioner as well as the Department to file additional statements and documents in support of their respective case.

Sd/-
Chief Justice